



U.S. Department of Justice

*Michael K. Loucks
Acting United States Attorney
District of Massachusetts*

Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210*

August 24, 2009

Rene Palomino, Jr., Esq.
46 N.E. 6th Street
Miami, FL 33132

Re: United States v. Albert Gonzalez
Criminal No. 08CR10223-PBS

Dear Mr. Palomino:

This letter sets forth the Agreement between the Acting United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Albert Gonzalez ("Defendant"), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, but in no event later than September 11, 2009, Defendant shall plead guilty to all counts -- Counts One through Nineteen -- in the above-referenced Indictment. Defendant expressly and unequivocally admits that he committed the crimes charged in the Indictment, did so knowingly, intentionally and wilfully, and is in fact guilty of those offenses.

2. Penalties

Defendant faces the following minimum mandatory and maximum penalties:

For Count One, violation of 18 U.S.C. § 371, a maximum penalty of imprisonment for five years, three years' supervised release, and a fine of up to twice Defendant's pecuniary gain, twice his victims' pecuniary loss or \$250,000, whichever is greatest.

For each of Counts Two through Six, violations of 18 U.S.C. § 1030, a maximum penalty of imprisonment for ten years, three years' supervised release, and a fine of up to twice Defendant's pecuniary gain, twice his victims' pecuniary loss or \$250,000, whichever is greatest.

For each of Counts Seven through Ten, violations of 18 U.S.C. § 1343, a maximum penalty of imprisonment for twenty years, five years' supervised release, and a fine of up to twice Defendant's pecuniary gain, twice his victims' pecuniary loss or \$250,000, whichever is greatest.

For each of Counts Eleven through Fifteen, violations of 18 U.S.C. § 1029, a maximum penalty of imprisonment for ten years, three years' supervised release, and a fine of up to twice Defendant's pecuniary gain, twice his victims' pecuniary loss or \$250,000, whichever is greatest.

For each of Counts Sixteen through Nineteen, violations of 18 U.S.C. § 1028A, a mandatory term of imprisonment of two years to be run consecutive to any other sentence imposed in this case, and up to three years' supervised release and a fine of up to twice Defendant's pecuniary gain, twice his victims' pecuniary loss or \$250,000, whichever is greatest.

Forfeiture as set forth in this plea agreement, restitution and mandatory special assessments of \$100 per count.

3. Sentencing Guidelines

The U.S. Attorney will take the position that the following sections of the advisory United States Sentencing Guidelines are applicable to Defendant's case:

§ 2B1.1 (a)(1) because the offenses involved theft, stolen property and destruction;

§ 2B1.1 (b)(1)(P) because over 40,000,000 credit and debit card numbers stolen during the offenses were recovered;

§ 2B1.1 (b)(2)(C) because the offenses involved 250 or more victims;

§ 2B1.1 (b)(4) because Defendant was in the business of receiving and selling stolen credit and debit card numbers;

§ 2B1.1 (b)(9)(C) because the offenses involved sophisticated means;

§ 2B1.1 (b)(10)(B)(i) because the offenses involved the trafficking of debit and credit card numbers;

§ 3B1.1 because Defendant was an organizer and leader of an extensive criminal activity that involved numerous participants;

§ 3B1.3 because Defendant possessed special skills which significantly facilitated the commission and concealment of the offenses; and

§ 3E 1.1(b) because Defendant has accepted responsibility for the offenses charged in this case.

Defendant reserves the right to object to the factual and/or legal basis for applying these sections of the Sentencing Guidelines to his offenses.

The U.S. Attorney's agreement to the disposition set forth below is conditioned on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case.

The U.S. Attorney may, at his sole option, be released from his commitments under this Agreement, including, but not limited to, his agreement that paragraph 5 constitutes the appropriate disposition of this case, if at any time between his execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit his conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about his financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; and/or
- (j) Attempts to withdraw his guilty plea.

4. Fed. R. Crim. P. 11(c)(1)(C) Plea

This plea agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and Defendant's plea will be tendered pursuant to that provision. In accordance with Fed. R. Crim. P. 11(c)(1)(C), if the Court accepts this plea agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any aspect of this plea agreement, the Government may deem the Agreement null and void.

Defendant expressly understands that he may not withdraw his plea of guilty unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

5. Agreed Disposition

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the U.S. Attorney and Defendant agree that the following is a reasonable and appropriate disposition of this case:

- (a) Imprisonment for not less than fifteen years nor more than twenty-five years. The sentence imposed shall be imposed to run concurrently to the fullest extent permitted by law with such sentences as may be imposed in United States v. Albert Gonzalez, Criminal Dkt. No. 08-160, pending in the United States District Court for the Eastern District of New York and in United States v. Albert Gonzalez, 09-cr-00626, pending in the District of New Jersey;
- (b) fine, within the United States Sentencing Guidelines range to be determined by the Court at the time of sentencing;
- (c) restitution in an amount to be determined by the Court at sentencing;
- (d) forfeiture of all currency and items alleged in the Indictment;
- (e) mandatory special assessment in the amount of \$1900; and
- (f) five years' supervised release, with special conditions restricting usage of computers and Internet accessible devices in a form to be determined by the Court at the time of sentencing.

Should either the U.S. Attorney for the Eastern District of New York or the U.S. Attorney for the District of New Jersey agree pursuant to Fed. R. Crim. P. 20 with Defendant to the transfer of the case pending in their District for the purpose of his plea and sentencing, the United States Attorney for the District of Massachusetts will approve such transfer. The U.S. Attorney further agrees to join in a motion to have any transferred case sentenced before the same judge as is presently hearing this matter. The U.S. Attorney also agrees to join in a request that the sentencing in any transferred case take place at the same hearing as the sentencing in this case, so that paragraph 5(a) may be effectuated to the fullest extent possible. Defendant expressly understands that he may not withdraw his plea of guilty should this motion and/or this request be denied.

6. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

7. Protection of Assets for Payment of Restitution, Forfeiture and Fine

Defendant agrees not to transfer, or authorize the transfer of, any asset which has been restrained by Order of the Court in this case or any asset, whether or not restrained, which Defendant has agreed to forfeit pursuant to this Agreement.

Defendant agrees not to transfer, or authorize the transfer of, any other asset in which he has an interest without prior express written consent of the U.S. Attorney, except for:

- (a) Assets subject to superior, secured interests of innocent third parties, in which Defendant has an equity interest of less than \$1000; and
- (b) Attorney's fees incurred in connection with this criminal case.

This prohibition shall be effective as of the date of Defendant's execution of this Agreement and continue until the fine, forfeiture and/or restitution ordered by the Court at sentencing incurred as a result of the conduct charged in the Indictment are/is satisfied in full.

Defendant further agrees that, prior to sentencing, he will truthfully and accurately complete a sworn financial statement, as further described in paragraph 11, below. He agrees to waive any defense based on the passage of time, including, but not limited to, the passage of the statute of limitations for any charge that may be brought against him for perjury or obstruction of justice based on a false statement made on his sworn financial statement. He also agrees to waive all applicable statutes of limitations for recovery of amounts forfeited and fines and/or restitution owed with respect to all assets he possesses and /or has an interest in, directly or indirectly, as of the date of this agreement.

8. Waiver of Right to Appeal and to Bring Other Challenge

a. Defendant has conferred with his attorney and understands that he has the right to challenge his convictions in the United States Court of Appeals for the First Circuit (in a proceeding called a "direct appeal"). Defendant also understands that he may, in some circumstances, be able to challenge his convictions in a future proceeding (such as, for example, in a collateral challenge pursuant to 28 U.S.C. §2255 or 28 U.S.C. §2241). Defendant waives any right he has to challenge his conviction on direct appeal or in any future proceeding.

b. Defendant has conferred with his attorney and understands that Defendants ordinarily have a right to appeal their sentences and may sometimes challenge their sentences in future proceedings. Defendant understands, however, that once the district court accepts this Rule 11(c)(1)(C) plea agreement, the court is bound by the parties' agreed-upon sentencing range. Defendant may not contest the agreed-upon sentencing range in an appeal or challenge a sentence within that range in a future proceeding in federal court. Similarly, the district court has no authority to modify an agreed-upon sentencing range under 18 USC §3582(c), even if the Sentencing Guidelines are later modified in a way that appears favorable to Defendant. Given that a Defendant

who agrees to a specific sentencing range cannot later challenge it, and also because Defendant desires to obtain the benefits of this plea agreement, Defendant agrees that he will not challenge the sentence imposed in an appeal or other future proceeding.

c. The U.S. Attorney likewise agrees that, regardless of the analysis employed by the Court, he will not appeal the imposition by the District Court of a sentence within the range agreed to by the parties as set out in paragraph 5.

9. Other post-sentence events.

a. In the event that, notwithstanding the waiver provision of paragraph 8(b), Defendant appeals or collaterally challenges his sentence, the U.S. Attorney reserves the right to argue the correctness of the sentence imposed by the district court (in addition to arguing that any appeal or collateral challenge is barred by the plea agreement).

b. In the event of a re-sentencing following an appeal from or collateral challenge to Defendant's sentence, the U.S. Attorney reserves the right to seek a departure from the Sentencing Guidelines and a sentence outside the Sentencing Guidelines if, and to the extent, necessary to reinstate the sentence advocated by the U.S. Attorney at Defendant's initial sentencing pursuant to this agreement.

c. If, following a direct appeal or other future proceeding, the district court re-sentences Defendant to a sentence less than the agreed-upon sentence, or below the agreed-upon sentencing range, the U.S. Attorney will have the right to appeal that sentence.

10. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties is not binding upon the United States Probation Office.

11. Forfeiture

Defendant will forfeit to the United States any and all assets subject to forfeiture pursuant to 18 U.S.C. §§ 981, 982, 1029, 1030 & 1343 and 28 U.S.C. § 2461, as a result of his guilty plea. The assets to be forfeited include, but are not limited to, cash, stocks, bonds, certificates of deposit, tangible and intangible personal property and real estate.

The assets to be forfeited specifically include, without limitation, the following:

- a. \$1,650,000.00 in United States currency;
- b. the condominium located at [REDACTED], Miami, Florida, more particularly described in the Special Warranty Deed recorded on [REDACTED] by the Miami-Dade County Clerk of Court at [REDACTED];
- c. one blue 2006 BMW 330I, bearing Vehicle Identification No.

- WBAVB33506KS37669;
- d. approximately \$6,700.00 in United States currency, seized from Albert Gonzalez on May 7, 2008;
 - e. approximately \$15,823.00 in United States currency, seized from Albert Gonzalez on May 7, 2008;
 - f. one IBM Laptop Computer, Serial No. L3-AD488, seized from National Hotel, Room 1508, 1677 Collins Avenue, Miami, Florida on May 7, 2008;
 - g. one Toshiba Laptop Computer, Serial No. X5040-119H, seized from National Hotel, Room 1508, 1677 Collins Avenue, Miami, Florida on May 7, 2008;
 - h. a Glock 27 firearm, Serial No. GSZ729, along with ammunition, seized from National Hotel, Room 1508, 1677 Collins Avenue, Miami, Florida on May 7, 2008;
 - i. one Nokia cell phone, Serial No. 0516774LN01AF, seized from National Hotel, Room 1508, 1677 Collins Avenue, Miami, Florida on May 7, 2008
 - j. one Everex Stepnote computer, Serial No. A07519663R, seized from [REDACTED] [REDACTED], Miami, Florida on May 7, 2008;
 - k. one 350C Currency Counter, Serial No. J764265, seized from [REDACTED] [REDACTED], Miami, Florida on May 7, 2008;
 - l. one Maxtor 300GB hard drive, Serial No. B60QLCYH, seized from [REDACTED] [REDACTED], Miami, Florida on May 7, 2008;
 - m. one Sharp Zaurus PDA, Serial No. 63007505, seized from [REDACTED] [REDACTED], Miami, Florida on May 7, 2008;
 - n. approximately \$178.87 in United States currency seized from the person and automobile of Albert Gonzalez on May 8, 2008;
 - o. approximately \$1,111,500.00 seized from [REDACTED] [REDACTED], Miami, Florida on November 25, 2008;
 - p. one Tiffany diamond ring, which Defendant gave to Jennifer Bulas as a gift;
 - q. one Rolex watch, which Defendant gave to Alberto Gonzalez as a gift;
 - r. one Rolex watch, which Defendant gave to Carlos Ansuarez as a gift; and
 - s. one Rolex watch, which Defendant gave to Jose Lago as a gift.

(collectively, the "Assets"). Defendant admits that the Assets are subject to forfeiture on the grounds that they constitute, or are derived from, proceeds of Defendant's unlawful activity and property used, or intended to be used, to commit the crimes charged in Counts One through Fifteen of the Indictment. Defendant therefore consents to the forfeiture of all of Defendant's interests in the Assets to the United States. The forfeitures may be carried out criminally, civilly, or administratively in the government's discretion.

Defendant acknowledges and agrees that \$1,650,000.00 in proceeds of the crimes to which he is pleading guilty has been transferred to, or deposited with, a third party, spent, cannot be located upon exercise of due diligence, placed beyond the jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty. Accordingly, Defendant agrees that the United States is entitled to forfeit as "substitute assets" any

other assets of Defendant up to the value of the now missing directly forfeitable assets.

Defendant agrees to assist law enforcement agents and government attorneys in locating, liquidating, recovering, returning to the United States, and forfeiting all forfeitable assets, wherever located, and in whatever names the assets may be held. Defendant shall promptly take whatever steps are deemed necessary by the U.S. Attorney and the United States Secret Service to transfer possession of, and clear title to, all forfeitable assets to the United States. Such steps may include, but are not limited to, executing and surrendering all title documents, and signing consent decrees of forfeiture, deeds, sworn statements relating the factual bases for forfeiture, and any other documents deemed necessary by the government to complete the criminal, civil, or administrative forfeiture proceedings which may be brought against the assets identified in this section and against any other forfeitable assets involved in or related to any of the criminal acts charged in the Indictment.

Defendant hereby acknowledges and agrees that the United States is not limited to forfeiture of the assets specifically listed in this section. If the U.S. Attorney determines that any directly forfeitable assets of Defendant cannot be located upon exercise of due diligence, or have been transferred or sold to, or deposited with, a third party, placed beyond the jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty, then the United States shall be entitled to forfeit as "substitute assets" any other assets of Defendant up to the value of the directly forfeitable assets fitting any of the categories described in this sentence.

In order to assist the United States in locating and forfeiting directly forfeitable and substitute assets, Defendant shall deliver to the U.S. Attorney within sixty days after signing this Agreement a sworn financial statement, executed under the pains and penalties of perjury, fully and truthfully disclosing the existence, nature and location of all assets in which Defendant currently has any legal or beneficial interest, and all assets over which Defendant has exercised control, or has had any legal or beneficial interest, at any time from January 1, 2003, to the present. At the request of the U.S. Attorney, Defendant further agrees to be deposed with respect to Defendant's assets.

Forfeiture of substitute assets shall not be deemed an alteration of Defendant's sentence. The forfeitures set forth herein shall not satisfy or offset any fine, restitution, cost of imprisonment, or other penalty imposed upon Defendant, nor shall the forfeitures be used to offset Defendant's tax liability or any other debt owed to the United States.

In addition to all other waivers or releases set forth in this Agreement, Defendant hereby waives any and all claims arising from or relating to the forfeitures set forth in this section, including, without limitation, any claims arising under the Double Jeopardy Clause of the Fifth Amendment, or the Excessive Fines Clause of the Eighth Amendment, to the United States Constitution, or any other provision of state or federal law.

The United States District Court for the District of Massachusetts shall retain jurisdiction to enforce the provisions of this section.

Defendant hereby waives and releases any and all claims he may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets. Without limiting the generality of the foregoing, Defendant hereby specifically waives and releases his claims to the Assets.

Defendant agrees to consent to the entry of orders of forfeiture for the Assets, including without limitation a money judgment in the amount of \$1,650,000.00 in United States currency, and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

12. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning his assets.

13. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this Agreement.

14. Withdrawal of Plea By Defendant or Rejection of Plea by Court

Should Defendant move to withdraw his guilty plea at any time, or should the Court reject the parties' agreed-upon disposition of the case or any other aspect of this Agreement, this Agreement shall be null and void at the option of the U.S. Attorney. In this event, Defendant agrees to waive any defenses based upon the statute of limitations, the constitutional protection against preindictment delay, and the Speedy Trial Act with respect to any and all charges that could have been timely brought or pursued as of the date of this Agreement.

15. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of his pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which otherwise may have

been brought against Defendant and/or have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach any provision of this agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by him, and any information, materials, documents or objects which may be provided by him to the government subsequent to this Agreement without any limitation. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have based upon any statute of limitations, the constitutional protection against preindictment delay, or the Speedy Trial Act.

16. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.


17. Complete Agreement

This letter contains the complete agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made by the parties other than those set forth in this letter and in the proffer letters dated November 6 and 19, 2008, and January 13, 2009. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral with the exception of those contained in these proffer letters. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Stephen P. Heymann.

Very truly yours,

MICHAEL K. LOUCKS
Acting United States Attorney

By: 
JOHN T. MCNEIL
Deputy Chief, Criminal Division

STEPHEN P. HEYMANN
Assistant U.S. Attorney

ACKNOWLEDGMENT OF PLEA AGREEMENT

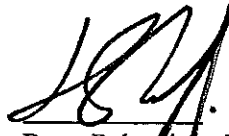
I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.



Albert Gonzalez
Defendant

Date: 08/25/09

I certify that Albert Gonzalez has read this Agreement and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly.



Rene Palomino, Jr., Esq.
Attorney for Defendant

Date: 8/25/09